



Paper No. 5

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In re Application of
Andrew Bell et al.
Application No. 09/921,051
Filed: August 2, 2001
Attorney Docket No. 1980044B-DIV

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:
OFFICE OF PETITIONS
: DECISION DISMISSING
: PETITION
:

This is a decision on the petition filed on April 2, 2002, requesting that the above-identified application be accorded a filing date of August 2, 2001, with Pages 175 to 182 of the specification as a part of the original disclosure.

The application was filed August 2, 2001. On February 19, 2002, however, the Office of Initial Patent Examination (OIPE) mailed a Notice of Omitted Items in a Nonprovisional Application stating that the application had been accorded a filing date of August 2, 2001, but that, Pages 175 to 182 of the specification (description and claims) appeared to have been omitted from the application.

In response, on April 2, 2002, the present petition was filed. Petitioners argue that a complete application was present on August 2, 2001, for filing date purposes. Petitioners point to their postcard receipt as evidence that Pages 175 to 185 of the specification were among the application papers filed on August 2, 2001. Petitioners request that the application be accorded a filing date of August 2, 2001, with Pages 175 to 185 as a part of the original disclosure.

The argument and evidence supplied with the petition as it relates to the post card receipt have been carefully considered, but are not persuasive. The USPTO has a well-established and well-publicized practice of providing a receipt for papers filed in the USPTO to any applicant desiring a receipt. The practice requires that any paper for which a receipt is desired be filed in the USPTO with a self-addressed postcard identifying the paper. A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO. See section 503, Manual of Patent Examining Procedure (MPEP 503).

Unfortunately, in this case, petitioners' postcard receipt fails to itemize the papers allegedly filed in this application. The postcard receipt does not itemize the number of pages of specification filed, or a specification at all. A postcard receipt will not serve as prima facie evidence of receipt in the USPTO of any items which are not properly itemized and identified.

Petitioner also asserts that the entire disclosure of the parent application was incorporated by reference into the instant divisional application. And, since the divisional specification is a true copy of the parent application, the specification should be deemed to have been filed with this application. This argument is persuasive. In a divisional application filed under 1.53(b), an applicant may incorporate by reference the prior application by including, in the application-as-filed, a statement that such specifically enumerated prior application or applications are "hereby incorporated herein by reference." The inclusion of this incorporation by reference of the prior application(s) will permit an applicant to amend the continuing application to include any subject matter in such prior application(s), without the need for a petition. See MPEP 201.06(c). A review of the application-as-filed reveals that the instant divisional application transmittal contained such a statement.

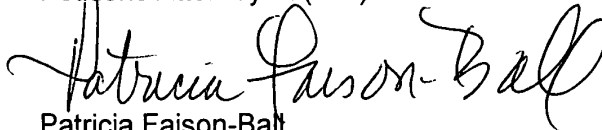
Accordingly, the petition is **DISMISSED**

The petition fee will not be refunded because there was no error on the part of the USPTO.

This application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of August 2, 2001, using the application papers received in the Office on that date and pages 175-182 of the specification resubmitted on petition filed April 18, 2002. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Obviously, in view of the incorporation by reference in the prior application, pages 175-182 of the specification is not new matter if it was a part of the disclosure of the prior application. Applicants may file an amendment to include pages 175-182 of the specification without a petition.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497.



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